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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 13th January, 2016

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CRL.M.C. 2432/2013

SHEETAL PRASAD SINGH

..... Petitioner

Represented by: Mr. R.M. Bagai, Adv.

versus

STATE & ANR

..... Respondents

Represented by: Mr. Panna Lal Sharma,
APP for State with Inspr. Deepak Chand
and SI Naresh Kumar, PS-EOW.

Mr. Prasoon Kumr, Mr. Deepak Chander
Pal and Mr. Ksitij Kumar, Adv. for R2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. By way of the present petition filed under Section 482 Cr.P.C., petitioner seeks directions thereby quashing of FIR No. 356/2004 registered at PS-Maya Puri for the offences punishable under Sections 395/120B/34 of the IPC against him.

2. Though initially, the present petition was filed as W.P(Crl.) No.723/2012, however, vide order dated 21.05.2013 this Court directed this said petition to be treated as petition being filed under Section 482 Cr.P.C.

3. Ld. Counsel appearing on behalf of the petitioner submits that the aforesaid case was registered on the complaint of

respondent no. 2, namely Yashvir Singh, whereby he stated as under:

“On 21.08.2003, about 1.30 pm, the complainant received a telephone call from his driver Satender Singh that 15/20 persons had robbed off his car No. DL 5CE 0037 at gun point. The complainant made a call at 100. A PCR Van came to his house and thereafter, he reached the place of incident. On the spot SHO Mayapuri had also come who made enquiries from his driver Satender Singh. Thereafter, both the complainant and driver Satender Singh were asked by SHO/Mayapuri to reach PS-Mayapuri. Complainant also informed that Piyush Kr. Singh and his father Sheetal Prasad Singh had committed a fraud to the tune of Rs.20/25 Crores in his company M/s Rare Fuel Automobile Technologies Pvt. Ltd. and a complainant to that effect had been lodged with PS Malviya Nagar. He also informed that a complaint regarding an attempt on his life by Piyush Kr. Singh, Director of M/s. Rare Fuel Automobile Technologies Pvt. Ltd. was being enquired into by Inspr. GR Solanki of DIU, South West and a case of robbery had been registered against Piyush Kr. Singh and Sheetal Prasad Singh at PS-Khajuri Khas. It had also been reported that SHO, Mayapuri told the complainant that the persons who had robbed the vehicle had given prior intimation to PS Dabri of repossession of vehicle in question. Complainant along with the driver went to PS Dabri where he requested SHO/Dabri to restore the vehicle along with articles lying therein. However, instead of restoring the vehicle to him, the alleged persons were released by the local police. Hence, the complainant came back to his house. On way to his house, he was

informed by the driver that police had not recorded exactly what he had stated rather they had recorded his statement on their own and got it signed from him.

On 27.11.2004, the above case was registered and investigation of the case was taken by Inspr. Ranbir Singh of DIU/ South West Distt. During investigation, statement of the driver of Indica Car No. DL 5CE 0037 was recorded in respect of the incident dated 21.08.2003. The driver stated that on the instructions of Sh. Yashvir Singh, he was driving the car near Bharti College, Janakpuri, Delhi. The car was stopped near Aggarwal Sweet House where, immediately 15/20, persons sitting in two jeeps "Gheraoed" him and at the point of the pistol, they forcibly took him with car and short while later abandoned him near C-1, Janakpuri, Delhi and took away the car.

Thereafter on 17.12.2004, one of the accused Shiva Kant Tiwari S/o, Sh. Ram Tiwari, R/o, B-1/98, Nand Nagri was arrested by Inspr. Ranbir Singh, DIU/SW. During interrogation, Shiva Kant Tiwari disclosed that he along with Ram Narain, Onkar, Pawan and Pradeep had come in a jeep near Nullah in East Sagarpur, Delhi. They saw Indica Car No. DL 5CE 0037 and followed it. After sometime they got the car stopped near Sagarpur Nullah. Onkar and Ram Narain went and talked to the driver of the car who was informed that the car was repossessed due to non-payment of instalments to the Bank. He handed over the key of the Indica Car to them. Information about the pre and post repossession of the car was given to PS Dabri. Thereafter, driver Satender Singh was asked to remove the articles from the car but he declined. Accordingly,

an inventory of the articles recovered from the car was prepared. The accused further told that no member of recovery team was having any weapon with them.”

4. Accordingly, Police investigated the case and filed the chargesheet dated 31.10.2011.

5. The role assigned to the petitioner as alleged by the complainant is that petitioner Sheetal Prasad Singh is the main conspirator in forcibly taking the possession of his vehicle. The statement of the complainant under Section 161 Cr.P.C. was recorded wherein he stated that petitioner was looking after the affairs of a company. Initially he was the Director of M/s. Rare Fuel Automobile Technology Pvt. Ltd. and later on his son Mr.Piyush Kr. was appointed as one of the Directors of the Company.

6. Ld. Counsel appearing on behalf of the petitioner submits that Petitioner was the Director in the aforesaid Company from 29.09.1999 to 31.10.2000. Thus, he ceased to be the Director of the said Company by 31.10.2000 and the certified copy of the Form – 32 registered with the ROC is on record. Moreover, as per details of Directorship, as per record available with ROC and as per search conducted on 03.12.2004, it is established that the petitioner had been the Director from 29.09.1999 to 31.10.2000. However, the present incident is of dated 21.08.2003 and at that point of time, petitioner was not associated with the said Company. Thus, he has been falsely implicated in this case. He further submitted that

earlier respondent no. 2/ complainant was the Director in the aforesaid company and was removed from the Directorship on 26.06.2003.

7. It is a matter of fact that the son of the petitioner, i.e., Mr. Piyush Singh was made Director after the petitioner left the Company and he continued to be Director on the date of incident. However, respondent no.2 has falsely made a complaint against the petitioner and his son as well.

8. He further submits that respondent no. 2 was removed from the Directorship and he continued to possess the above-noted car in question which was owned by the Company and financed by HDFC Bank, New Delhi. The said car was possessed by the said Bank as the company had failed to pay the instalments of the finance advanced by the Bank.

9. Learned counsel for petitioner further submits that if it is presumed for the sake of argument that the petitioner was in the team of repossessing the vehicle, even then the case cannot be registered against the petitioner and has relied upon the cases ***Sardar Trilok Singh v. Satya Deo Tripathi 1979 4 SCC 396***; ***Charanjit Singh Chadha v. Sudhir Mehra 2001 7 SCC 417*** and ***Anup Sarmah v. Bhola Nath Sharma and Ors. 2013 1 SCC 400*** wherein on similar facts, the FIR was directed to be quashed against the accused therein

10. Ld. Counsel for the petitioner further submits that Company was owner of the vehicle in question which was financed from the HDFC Bank. The respondent no.2 was not the owner of the vehicle. Moreover, he was ceased to be Director of the Company in the year 2003, however, he continued to be in possession of the same. Thus, he had no right over the vehicle in question.

11. On the other hand, ld. APP appearing on behalf of the State submits that on the basis of complaint and statement recorded under Section 161 Cr.P.C. of the complainant/respondent no.2, chargesheet has been filed against eight accused persons including the petitioner, whereas respondent no. 2 made complaint against 15 to 16 persons. He further submits after proper investigation, there are allegations against the petitioner, therefore, if the petitioner has some material in his favour, he may argue the case before the Trial Court on the point of charge. Therefore, present petition is liable to be dismissed.

12. Ld. Counsel appearing on behalf of the respondent no. 2 / complainant submits that in the present case chargesheet has been filed against the petitioner after thorough investigation and the petitioner hatched a conspiracy to take possession of the vehicle by acting behind the curtain as he was looking after the affairs of the Company to which the vehicle in question belonged to. He further submitted that though the respondent no. 2 was removed from the Company, however, said removal is under challenge. Therefore, certified copy of Form – 32 cannot be relied upon.

13. From the facts recorded above, it is established that Id. APP of the State and Id. Counsel of respondent no. 2 have failed to establish that the petitioner was working with the company mentioned above and he had any connection with the said Company after 31.10.2000, when he was ceased as a Director. The incident in question took place on 21.08.2003. Thus, the present case seems to be of personal vendetta against the petitioner. Therefore, this type of misuse of law cannot be allowed as has been decided by the Hon'ble Supreme Court in the case of *State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335*.

14. In view of the fact that there is no material on record that the petitioner was the part of the Company on the date of incident, therefore, he cannot be impleaded in the said case.

15. In *Sardar Trilok Singh (supra)* the Supreme Court had an occasion to examine the identical case wherein a truck had been taken in possession by the financier in terms of hire-purchase agreement as there was a default in making the payment of the installments. Accordingly, a criminal case had been filed against the financier under Sections 395/468/465/471/120B/34 of the IPC. The High Court refused to exercise its power under Section 482 of the Cr.P.C. and did not quash the criminal proceedings on the ground that financier had committed the offence. However, reversing the said judgment of High Court, the Supreme Court held that the proceedings were clearly an abused process of the Court.

16. The Supreme Court again in *Charanjit Singh Chadha* (*supra*) the petitioner challenged the impugned judgment and order dated 22.06.2009 passed by High Court of Guwahati in Criminal Revision Petition No.156/2009 whereby rejected the case of the petitioner against respondents that they had forcibly taken the custody of the vehicle purchased by the petitioner under hire-purchase agreement from them. The High Court had quashed the criminal proceedings against respondents. The petitioner therein challenged the same order, however, the Supreme Court while relying upon the judgment, noted above, did not interfere with the findings of the High Court.

17. The facts of the present case are also similar to the cases referred above, therefore, keeping in view the facts recorded above and the law discussed above, present petition is allowed.

18. Consequently, FIR No. 356/2004 registered at PS-Maya Puri for the offences punishable under Sections 395/120B/34 IPC and all proceedings emanating therefrom are hereby quashed against the petitioner.

19. No order as to costs.

SURESH KAIT, J

JANUARY 13, 2016

Jg/M